IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

IN RE REGIONS MORGAN KEEGAN SECURITIES, DERIVATIVE and ERISA LITIGATION	:	
This Document Relates to:	:	MDL Docket No. 2009 Hon. Samuel H. Mays, Jr.
Landers v. *Morgan Asset Management, Inc.*, No. 2:08-cv-02260-SMH-dvk	:	

REPLY MEMORANDUM IN SUPPORT OF REGIONS FINANCIAL CORPORATION'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED DERIVATIVE COMPLAINT

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April 5, 2010

Regions Financial Corporation respectfully submits this reply memorandum in further support of its motion to dismiss this purported derivative action.

Only last month, this Court dismissed a purported derivative action brought by another investor in one of the Morgan Keegan mutual funds. *In re Regions Morgan Keegan Securities, Derivative, and ERISA Litig.* ("*Ryan*"), --- F. Supp. 2d. ---, 2010 WL 890950 (W.D. Tenn. March 10, 2010) (Mays, J.). As here, the plaintiff in *Ryan* failed to make demand upon the board of directors—the same directors as in this action—and argued that demand should be excused because the directors were allegedly conflicted and demand was thus futile. *Ryan*, 2010 WL 890950, at *7. This Court rejected those arguments, holding that plaintiff had "failed to plead facts sufficient to excuse the stringent demand requirement of Maryland law," and thus the complaint should be dismissed. *Ryan*, 2010 WL 890950, at *1. As in *Ryan*, plaintiffs' failure here to make demand or adequately plead demand futility requires dismissal. *Werbowsky* v. *Collomb*, 766 A.2d 123, 145 (Md. 2001) (if a complaint "fails to allege sufficient facts which, if true, would demonstrate the futility of a demand, it is entirely appropriate to terminate the action on a motion to dismiss").

Plaintiffs all but concede that they did not—and cannot—plead facts sufficient to excuse demand under Maryland's "stringent" standard and instead urge this Court to ignore established Maryland law and fashion a new rule, arguing that the Court should excuse demand because plaintiffs' claims are not, in their word, "meritless." (Opp. at 24, 27-30.) Maryland law flatly rejects such arguments, however, and this Court has previously held that the demand futility analysis is not decided on the merits of the case. *Ryan*, 2010 WL 890950, at *7.

Finally, plaintiffs argue "alternatively" that after filing this suit they made demand on a new board of directors. (Opp. at 52-57.) Not so. No proper demand has been made on the

new directors, and even if it had, plaintiffs concede that although "this suit was initiated in March 2008," their communication with the board did not occur until three months later, "[i]n June 2008." (Opp. at 52-54.) Making demand after a suit has been commenced, as plaintiffs claim to have done here, is insufficient and fails to satisfy the requirements of Rule 23.1 of the Federal Rules of Civil Procedure. *In re Sapient Corp. Derivative Litig.*, 555 F. Supp. 2d 259, 263 (D. Mass 2008).

CONCLUSION

Accordingly, for the reasons set forth herein and in the memoranda filed by the Morgan Keegan defendants (incorporated herein by reference), the Amended Complaint should be dismissed with prejudice.

Dated: April 5, 2010

Respectfully submitted,

/s/ Peter S. Fruin
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed this the 5th day of April 2010, using the CM/ECF system which will automatically serve a copy of this pleading on all parties of record.

/s/ Peter S. Fruin
Of Counsel